# UNITED STATES OF AMERICA DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States	)	
Department of Housing and Urban	)	
Development, on behalf of Metropolitan St. Louis	)	
Equal Housing Opportunity Council,	)	
	)	
Charging Party,	)	
	)	HUDALJ No.
V.	)	FHEO No. 05-05-0001-8
	)	
Patrick Netemeyer, Netemeyer Engineering	)	
Associates, Inc., Ron Noble, Vollmer Realty, Inc.,	)	
Teresa Rutz, Residential Design & Blueprint	)	
Company, Dan L. Sheils, Shanrie Company, Inc.,	)	
and Thouvenot, Wade & Moerchen, Inc.,	)	
	)	
Respondents.	)	
	)	

#### CHARGE OF DISCRIMINATION

## I. JURISDICTION

On or about September 29, 2004, Complainant Metropolitan St. Louis Equal Housing Opportunity Council, ("Metro St. Louis"), an aggrieved person as defined by the Fair Housing Act, 42 U.S.C. §3601, et seq. ("Act"), filed a verified Complaint, amended October 4, 2004, with the U.S. Department of Housing and Urban Development (the "Department"), alleging that Respondents Patrick Netemeyer of Netemeyer Engineering Associates, Incorporated ("Respondent Netemeyer"), Ron Noble of Vollmer Realty, Incorporated ("Respondent Noble"), Teresa Rutz of Residential Design & Blueprint ("Respondent Rutz"), Dan L. Sheils, of Shanrie Company, Incorporated ("Respondent Sheils"), and Thouvenot, Wade & Moerchen, Incorporated ("Respondent TWM") violated the Act by discriminating based on disability by failing to design and construct multifamily dwellings for first occupancy after March 13, 1991, in a manner required by the Act, 42 U.S.C. §3604(f)(2) and §3604(f)(3)(C).

The Act authorizes the issuance of a charge of discrimination on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. §3610(g)(1) and (2). The Secretary has delegated to the General Counsel (54 Fed. Reg. 13121), who has redelegated to the Regional Counsel (67 Fed. Reg. 44234), the authority to issue such a

charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

The Director of HUD's Office of Fair Housing and Equal Opportunity for the Midwest HUB, Region V, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case based on disability and has authorized and directed the issuance of this Charge of Discrimination.

### II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the Complaint and Determination of Reasonable Cause, Respondents Netemeyer, Noble, Rutz, Sheils and TWM are charged with discriminating against Complainant Metro St. Louis, an aggrieved person, based on disability, in violation of the Act. 42 U.S.C. §3604(f)(2) and (f)(3)(C). The allegations that support this Charge of Discrimination are as follows:

- 1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person, a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or any person associated with that person. 42 U.S.C. §3604(f)(2).
- 2. For purposes of 42 U.S.C. §3604(f)(3)(C), discrimination includes a failure to design and construct covered multifamily dwellings ready for first occupancy after March 13, 1991, in such a manner that:
  - a. the public use and common use portions of such dwellings are readily accessible to and usable by disabled persons;
  - b. all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and
  - c. all premises within such dwellings contain the following features of adaptive design:
    - i) an accessible route into and through the dwelling;
    - ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
    - iii) reinforcements in bathroom walls to allow later installation of grab bars; and
    - iv) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
- 3. The Act, 42 U.S.C. §3604(f)(7); defines "covered multifamily dwellings" as:

- a. buildings consisting of four or more units if such buildings have one or more elevators; and
- b. ground floor units in other buildings consisting of four or more units.
- 4. The subject property, commonly known as the Applegate Apartments and located at 1463, 1467, 1477, 1481, 1491 and 1495 Cantwell Lane, Swansea, Illinois ("Property"), currently consists of 6 three-story, non-elevator buildings, each with 12 units. The only existing common areas are parking lots and mail and garbage collection areas. Buildings one through five are currently occupied. On information and belief the sixth building is currently under construction.
- 5. None of the buildings at the Property has an elevator, so only ground floor units therein are covered dwellings under the Act. 42 U.S.C. §3604(f)(7).
- 6. All building permits for the Property were issued in or after 2001, nearly 10 years after the effective date of the Act. Therefore, the Property is required to comply with the design and construction requirements of the Act, which apply to all covered multi-family dwellings ready for first occupancy after March 13, 1991. 42 U.S.C. §3604(f)(3)(C).
- 7. Complainant Metro St. Louis is a nonprofit corporation located in St. Louis, Missouri, that serves and advocates for equal housing for all individuals, regardless of race, sex, national origin, family status or disability in the St. Louis metropolitan area, which includes parts of Illinois, and specifically, Swansea, Illinois. In furtherance of its mission, Complainant assists its disabled consumers to locate accessible housing. Complainant provides advocacy services, conducts education and outreach activities, and files fair housing complaints. It also conducts fair housing "tests" to determine whether housing providers engage in discriminatory housing practices against members of classes protected under the Act, including individuals with disabilities.
- 8. Respondent Netemeyer, a structural engineer with Netemeyer Engineering Associates, Incorporated, advised Respondent Sheils with respect to accessible paths of travel. He also sealed the plans prepared by Respondent Rutz and is the design professional of record on the Property. He provided professional engineering services, construction advice and sealed the plans.
- 9. Respondent Noble was the original developer of the Property. On information and belief, Respondent Noble and Vollmer Realty, Incorporated directed the original development of the Property, including direction of Respondent TWM's engineering of the property and selection of the design of the buildings to be built on the Property.

<sup>&</sup>lt;sup>1</sup> When complete, the Property is projected to have a total of 12 three-story buildings, 144 units, a clubhouse and swimming pool

- 10. Respondent Rutz of Residental Design & Blueprint designed the Property. The plans that Respondent Rutz supplied to Respondent Sheils, the developer and builder of the Property, did not comply with the design and construction requirements of the Act.
- 11. Respondent Sheils, of Shanrie Company, Incorporated, is the current owner, developer and builder of the Property. Respondent Sheils has constructed the Property without complying with the design and construction requirements set forth in the Act.
- 12. Respondent TWM was the site engineer on the Property. It failed to conduct the proper site analysis to determine the number of required accessible units and feasibility of an accessible path of travel from the parking lot to the ground floor units. It failed to insure that the exterior elements at the Property complied with the design and construction requirements of the Act. 42 U.S.C. §3604(f)(3)(C)(i).
- 13. Complainant Metro St. Louis became aware of the Property in early September, 2004, when it came across an advertisement for new construction in the *Belleville News Democrat*. The ad read, "BRAND NEW 2 br., 2 ba., with w/d, fp., walk-in closets, No Pets, from \$725/mo, no Sec. 8, open daily, 622-4959."
- 14. Complainant subsequently visited the Property on September 29, 2004, to conduct a site inspection and accessibility test of some of the newly constructed buildings and the common areas. Complainant's inspection and test demonstrated that the buildings and exterior elements tested were not constructed in compliance with the design and construction requirements of the Act. 42 U.S.C. §3604 (f)(3)(C).
- 15. Using the services of an expert in accessible design and construction, the United States investigated and confirmed that Respondents designed and constructed the Property in violation the Act. 42 U.S.C. §3604 (f)(3)(C). Violations include, but are not limited to the following:
  - a. The site plan prepared by the civil engineer showing significant reductions in units required by the HUD Fair Housing Accessibility Guidelines (hereinafter "FHAG") clearly shows that the site analysis test was not conducted properly, because there is no evidence to the Part C component of that test. That part requires an analysis of whether accessible approach walks could be installed with a slope no greater than 8.3% and therefore should have been installed. When one considers the Part C analysis, none of the constructed units would qualify for exemption under the site analysis test.
  - b. There were many instances on the ground floor level of level changes greater (at as much as 1 3/4") than the maximum allowable 1/2" between the exterior approach route at the primary entrance doors and the interior finish floor level. The thresholds also lack 1:2 maximum slope bevel level changes

- (with as much as  $1 \frac{1}{4}$ " lips) and are higher (at  $1 \frac{1}{4}$ ") than the maximum allowable 3/4".
- c. The primary entry doors on the ground level have inaccessible round doorknob hardware.
- d. Because there are steps between the covered units and the parking, the primary entry doors on the ground floor levels are not connected by an accessible route from the parking lot (which has no designated accessible parking spaces), nor from the public street because of a lack of accessible walks.
- e. The porch lights protrude further than 4" into the circulation route approaching the covered units on the ground floor level.
- f. The dumpsters have lids that are closed and higher than the maximum 54" reach range for wheelchair users.
- g. The undersides of the stairs along the approach walks to the ground level covered units are not cane detectable and do not offer a minimum 80" head height.
- h. The mail kiosks and trash dumpsters are positioned such that disabled tenants would have to travel in the unsafe driveway parallel to on-coming traffic and behind parked cars in order to approach them.
- i. The interior unit surveyed in Building #5 had the following typical FHAG violations:
  - 1. Electrical outlets were mounted below the minimum 15" height.
  - 2. The door (at 27" clear) between the laundry room and utility room, both bedroom doors (at only 28" clear), each walk-in closet door in the bedrooms (at only 28" and 26" clear for front and back respectively) and the bathroom door (at only 26" clear) for the back master bedroom all offer less than the minimum allowed nominal 32" clear passage width.
  - 3. The kitchen sink is positioned in the corner of the base cabinets such that there is no centered parallel 48" wide clear floor space for wheelchair users.
  - 4. The sliding glass patio door offers less (at 30 3/4") than the minimum required 32" nominal clear passage width, the threshold is (at 2" high) higher than the maximum allowed 3/4" and has no 1:2 beveled approach.

- 5. The thermostat is mounted with the highest operable element (at 54") higher than the maximum 48" allowed by the FHAG.
- J. The end unit surveyed in Building #5 had the following typical FHAG violations:
  - 1. Electrical outlets were mounted below the minimum 15" height.
  - 2. The door (at 26" clear) between the laundry room and utility room, both bedroom doors (at only 28" clear), each walk-in closet door in the bedrooms (at only 26" clear for front and back respectively) and the bathroom door (at only 26" clear) for the back master bedroom all offer less than the minimum allowed nominal 32" clear passage width.
  - 3. The kitchen sink is positioned in the corner of the base cabinets such that there is no centered parallel clear floor space for wheelchair users.
  - 4. The sliding glass patio door offers less (at 30 3/4") than the minimum required 32" nominal clear passage width, the threshold is (at 2" high) higher than the maximum allowed 3/4" and has no beveled approach.
  - 5. The thermostat is mounted with the highest operable element (at 54") higher than the maximum 48" allowed by the FHAG.
  - 6. The alcove for the toilet in the hall bath is narrower (at only 30") than the minimum 33" required by the FHAG and the toilet is centered (at only 13 1/2") less than the minimum 18" from the sidewall near the tub.
  - 7. The lavatory is situated in an alcove that allows less (at only 42") than the minimum required 48" parallel clear floor space by the FHAG.
- 16. By failing to design and construct the Property in accordance with 42 U.S.C. §3604(f)(3)(C) of the Act, Respondents discriminated against Complainant in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of disability. 42 U.S.C. §3604(f)(2).
- 17. Because of Respondents' discriminatory conduct, Complainant has suffered damages, including frustration of its mission and diversion of its resources away from other fair housing activities in which it would be otherwise engaged,

including housing referral, education and outreach, testing and filing other fair housing actions, in order to address Respondents' discriminatory conduct.

## III. CONCLUSION

WHEREFORE, the Secretary of Housing and Urban Development, through the Regional Counsel, Region V, and pursuant to 42 U.S.C. §3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §3604(f)(2) and §3604(f)(3)(C) of the Act, and prays that an order be issued that:

- 1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Fair Housing Act, as amended, 42 U.S.C. §3601 *et seq.*;
- 2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them from discriminating because of disability against any person in any aspect of the purchase, rental, design or construction of a dwelling;
- 3. Directs Respondents, their agents, employees, successors, and all other persons in active concert or participation with any of them to bring the covered units, as well as the public use and common use areas, into compliance with 42 U.S.C. §3604(f)(3)(C), including providing reasonable compensation to the tenants of the Property for inconvenience caused by, and other expenses related to, such retrofitting;
- 4. Awards such damages as will fully compensate Complainant, an aggrieved person, for its actual damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. §§ 3604(f)(2) and (f)(3)(C); and
- 5. Awards a civil penalty against Respondents for each violation of the Act committed pursuant to 42 U.S.C. § 3612(g)(3).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

COURTNEY MINOR

Regional Counsel
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